

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1577-PST-E TCEQ ID: RN101435444 CASE NO.: 34710
RESPONDENT NAME: CHANTHORN PATRICK TES DBA 34 EXPRESS

Page 1 of 4

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1706 State Highway 34 South, Terrell, Kaufman County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the Respondent did not have a valid delivery certificate. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: The complainant has not expressed a desire to speak at agenda or protest this action. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired November 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Judy Kludge, Waste Enforcement Section, MC R-4, (817) 588-5825</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903</p> <p style="margin-left: 20px;">Respondent: Mr. Chanthorn Patrick Tes, Owner, 34 Express, 1706 State Highway 34 South, Terrell, Texas 75160; Mr. Chanthorn Patrick Tes, Owner, 34 Express, 1001 South Virginia Street, Terrell, Texas 75160-4504</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: August 8, 2007</p> <p>Date of Investigation Relating to this Case: August 24, 2007</p> <p>Date of NOE Relating to this Case: September 18, 2007</p> <p>Background Facts: The EDPRP was filed May 8, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on May 9, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. By letter dated August 18, 2008, the Respondent was given notice of TCEQ's intent to order the Station Shutdown. According to the return receipt "green card," the Respondent received the notice on August 21, 2008.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent does not have a current delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain Stage 1 records at the Station [30 TEX. ADMIN. CODE § 115.226(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to ensure that the gasoline container is equipped with a submerged fill pipe [30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to ensure that the atmospheric emission during gasoline transfer in the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch [30 TEX ADMIN. CODE § 115.222(5) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$26,800</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$26,800</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent implemented the following corrective measures at the Station:</p> <ol style="list-style-type: none"> On September 14, 2007, the required drop tubes were installed to within six inches of the tank bottom in all USTs; On September 10, 2007, obtained Financial Assurance for the USTs at the Station; and On September 30, 2007, installed a pressure vacuum relief valve on the gasoline vent line. <p>Ordering Provisions:</p> <p>The Respondent's UST delivery certificate is revoked immediately. The Respondent shall cease accepting fuel until such time as a valid certificate is obtained. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, take the following steps to shut down operations of the UST system at the Station: <ol style="list-style-type: none"> Cease dispensing fuel from the USTs; Cease receiving deliveries of regulated substances into the USTs; Padlock the dispensers; Empty the USTs of all regulated substances; and Temporarily remove the UST system from service. Within 10 days, surrender his UST delivery certificate to TCEQ. Within 15 days, submit a written report documenting the steps taken to comply with Ordering Provision Nos. 1 and 2.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>5. Failed to ensure that the UST registration and self-certification form is fully and accurately completed and submitted to the agency in a timely manner [30 TEX. ADMIN. CODE § 334.8(c)(4)(B)].</p> <p>6. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>7. Failed to ensure that all the USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>8. Failed to provide release detection for the piping associated with the USTs [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>9. Failed to conduct reconciliation of detailed inventory controls records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>10. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p>		<p>4. The Respondent's UST systems shall remain out of service until such time as the Respondent demonstrates to the satisfaction of the Executive Director that he has corrected the violations noted herein.</p> <p>5. If elected to permanently remove from service any UST systems at the Station, immediately and permanently remove those UST systems from service, and within 15 days, submit to the TCEQ a written report documenting compliance.</p> <p>6. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:</p> <ul style="list-style-type: none"> a. Install and implement a release detection method for all USTs and the piping associated with the USTs, and begin conducting proper inventory control procedures; b. Ensure that corrosion protection is in place for all components of the underground UST system; c. Begin maintaining all Stage I records at the Station; and d. Obtain a new delivery certificate. <p>7. Upon obtaining a new delivery certificate, post the document where it is clearly visible at all times.</p> <p>8. Within 10 days of resuming service of the USTs, submit written certification demonstrating compliance with Ordering Provisions Nos. 6. and 7.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>11. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>12. Failed to provide corrosion protection to all underground components of an UST system which is used to convey or contain regulated substances [30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d)].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

DATES	Assigned	24-Sep-2007	Screening	26-Sep-2007	EPA Due	
	PCW	18-Dec-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Chanthorn Patrick Tes dba 34 Express		
Reg. Ent. Ref. No.	RN101435444		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34710	No. of Violations	7
Docket No.	2007-1577-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	EnforcementTeam 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$24,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment due to compliance history.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes	The Respondent does not meet the good faith criteria.
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Total EB Amounts	\$2,699	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$5,400	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$24,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	9%	Adjustment	\$2,300
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost associated with the violations.
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Final Penalty Amount	\$26,800
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$26,800
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$26,800
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Screening Date 26-Sep-2007

Docket No. 2007-1577-PST-E

PCW

Respondent Chanthorn Patrick Tes dba 34 Express

Policy Revision 2 (September 2002)

Case ID No. 34710

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN101435444

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date: 26-Sep-2007 Respondent: Chanthorn Patrick Tes dba 34 Express Case ID No: 34710 Reg. Ent. Reference No: RN101435444 Media [Statute]: Petroleum Storage Tank Enf. Coordinator: Judy Kluge Violation Number: 1	Docket No: 2007-1577-PST-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision September 19, 2007</i>												
Rule Cite(s) 30 Tex. Admin. Code § 115.226(1) and Tex. Health & Safety Code § 382.085(b)													
Violation Description Failed to maintain Stage I records at the Station. Specifically, a record of the dates on which gasoline was delivered to the dispensing Station, the truck identification number, and the date of the last leak testing of each tank-truck tank from which gasoline was transferred to the Station were not available.													
Base Penalty \$10,000													
>> Environmental, Property and Human Health Matrix													
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="2" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Harm		Release	Major	Minor	Actual	<input type="checkbox"/>	<input type="checkbox"/>	Potential	<input type="checkbox"/>	<input type="checkbox"/>
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Release	Major	Minor											
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Percent 0%													
>> Programmatic Matrix													
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	Falsification	Major	Moderate	Minor									
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>									
Percent 10%													
Matrix Notes	100% of the rule requirement was not met.												
Adjustment \$9,000													
\$1,000													
Violation Events													
Number of Violation Events <input type="text" value="1"/>													
Number of violation days <input type="text" value="33"/>													
mark only one with an x	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">daily</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	daily	<input type="checkbox"/>	monthly	<input type="checkbox"/>	quarterly	<input type="checkbox"/>	semiannual	<input type="checkbox"/>	annual	<input type="checkbox"/>	single event	<input checked="" type="checkbox"/>
daily	<input type="checkbox"/>												
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quarterly	<input type="checkbox"/>												
semiannual	<input type="checkbox"/>												
annual	<input type="checkbox"/>												
single event	<input checked="" type="checkbox"/>												
Violation Base Penalty \$1,000													
One single event is recommended based on documentation of the violation during the August 24, 2007 investigation.													
Economic Benefit (EB) for this violation													
Statutory Limit Test													
Estimated EB Amount \$5	Violation Final Penalty Total \$1,094												
This violation Final Assessed Penalty (adjusted for limits) \$1,094													

Economic Benefit Worksheet

Respondent Chanthorn Patrick Tes dba 34 Express

Case ID No. 34710

Reg. Ent. Reference No. RN101435444

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$					

Delayed Costs

Equipment			0.0	\$0	\$0	\$0
Buildings			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0
Engineering/construction			0.0	\$0	\$0	\$0
Land			0.0	\$0	\$0	\$0
Record Keeping System	\$100	24-Aug-2007	26-Jul-2008	0.9	\$5	\$5
Training/Sampling			0.0	\$0	\$0	\$0
Remediation/Disposal			0.0	\$0	\$0	\$0
Permit Costs			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0

Notes for DELAYED costs

Estimated cost to maintain records of all fuel deliveries, truck identification, and truck tightness tests. The required date is the date of the investigation and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE (1) avoided costs before entering item (except for one-time avoided costs)

Disposal			0.0	\$0	\$0	\$0
Personnel			0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.0	\$0	\$0	\$0
Supplies/equipment			0.0	\$0	\$0	\$0
Financial Assurance [2]			0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$5

Screening Date	26-Sep-2007	Docket No.	2007-1577-PST-E	PCW																					
Respondent	Chanthorn Patrick Tes dba 34 Express	Policy Revision 2 (September 2002) PCW Revision September 19, 2007																							
Case ID No.	34710																								
Reg. Ent. Reference No.	RN101435444																								
Media [Statute]	Petroleum Storage Tank																								
Enf. Coordinator	Judy Kluge																								
Violation Number	2																								
Rule Cite(s)	30 Tex. Admin. Code § 115.222(1) and (5) and Tex. Health & Safety Code § 382.085(b)																								
Violation Description	<p>Failed to ensure that the gasoline storage container is equipped with a submerged fill pipe. Specifically, the submerged fill pipes in the regular and super unleaded tanks were not within six inches of the tank bottom. Also, failed to ensure that the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch. Specifically, a rain cap instead of the required pressure-vacuum relief valve was observed on the gasoline vent line.</p>																								
			Base Penalty	\$10,000																					
>> Environmental, Property and Human Health Matrix																									
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Release</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> </table>					Harm				Major	Moderate	Minor	Release				Actual				Potential		X		Percent <input type="text" value="10%"/>
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	Major	Moderate	Minor																						
Falsification																									
Actual																									
Potential																									
Matrix Notes	<div style="border: 1px solid black; padding: 5px;">Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.</div>																								
			Adjustment	\$9,000																					
			\$1,000																						
Violation Events																									
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="33"/>																							
mark only one with an x	daily	<input type="text"/>																							
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Violation Base Penalty <input type="text" value="\$1,000"/>																									
One quarterly event is recommended based on the documentation of the violation during the August 24, 2007 investigation to the September 26, 2007 screening date.																									
Economic Benefit (EB) for this violation			Statutory Limit Test																						
Estimated EB Amount <input type="text" value="\$4"/>			Violation Final Penalty Total <input type="text" value="\$1,094"/>																						
			This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,094"/>																						

Economic Benefit Worksheet

Respondent Chanthorn Patrick Tes dba 34 Express

Case ID No. 34710

Reg. Ent. Reference No. RN101435444

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No comments					

Delayed Costs

Pressure Relief Valves	\$250	24-Aug-2007	30-Oct-2007	0.2	\$0	\$3	\$3
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	\$0	\$0
Record Keeping System				0.0	\$0	\$0	\$0
Training/Sampling				0.0	\$0	\$0	\$0
Remediation/Disposal				0.0	\$0	\$0	\$0
Permit Costs				0.0	\$0	\$0	\$0
Drop Tubes	\$250	24-Aug-2007	14-Sep-2007	0.1	\$1	\$1	\$1

Notes for DELAYED costs

Estimated cost to install pressure vacuum relief valves on the drop tubes for the USTs. The required date is the investigation date and the final date is the date of compliance. Estimated expense to install drop tubes in the gasoline tanks. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE (1) avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$4

Screening Date: 26-Sep-2007		Docket No: 2007-1577-PST-E		PCW	
Respondent: Chanthorn Patrick Tes dba 34 Express				<i>Policy Revision 2 (September 2002)</i>	
Case ID No: 34710				<i>PCW Revision September 19, 2007</i>	
Reg. Ent. Reference No: RN101435444					
Media Statute: Petroleum Storage Tank					
Enf. Coordinator: Judy Kluge					
Violation Number: 3					
Rule Cite(s):		30 Tex. Admin. Code §§ 334.7(d)(3) and 334.8(c)(4)(B)			
Violation Description:		Failed to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not amended to reflect current ownership of the UST system. Failed to ensure that the UST registration and self-certification form is fully and accurately completed and submitted to the agency in a timely manner. Specifically, the initial self-certification was not submitted.			
Base Penalty					\$10,000

>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual				
	Potential				Percent
					0%

>> Programmatic Matrix					
OR	Falsification				
	Major	Moderate	Minor		
	Actual				
	Potential				Percent
					10%

Matrix Notes	100% of the rule requirement was not met.
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Adjustment		\$9,000
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Final Penalty		\$1,000
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Violation Events					
Number of Violation Events: 1		Number of violation days: 33			
mark only one with an x	daily				
	monthly				
	quarterly				
	semiannual				
	annual				
	single event				x
One single event is recommended based on documentation of the violation during the August 24, 2007 investigation.					
Violation Base Penalty					\$1,000

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$68	Violation Final Penalty Total	\$1,094
This violation Final Assessed Penalty (adjusted for limits)		\$1,094	

Economic Benefit Worksheet

Respondent: Chanthorn Patrick Tes dba 34 Express

Case ID/No. 34710

Reg. Ent. Reference No: RN101435444

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No comments							

Delayed Costs

Equipment				0:0	\$0	\$0	\$0
Buildings				0:0	\$0	\$0	\$0
Other (as needed)				0:0	\$0	\$0	\$0
Engineering/construction				0:0	\$0	\$0	\$0
Land				0:0	\$0	N/A	\$0
Record Keeping System	\$500	31-Oct-2005	26-Jul-2008	2:7	\$68	N/A	\$68
Training/Sampling				0:0	\$0	N/A	\$0
Remediation/Disposal				0:0	\$0	N/A	\$0
Permit Costs				0:0	\$0	N/A	\$0
Other (as needed)				0:0	\$0	N/A	\$0

Notes for DELAYED costs

Estimated cost to submit a completed UST registration form to the TCEQ. The date required is 30 days after the ownership change date and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0:0	\$0	\$0	\$0
Personnel				0:0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0:0	\$0	\$0	\$0
Supplies/equipment				0:0	\$0	\$0	\$0
Financial Assurance [2]				0:0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0:0	\$0	\$0	\$0
Other (as needed)				0:0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$68

Screening Date	26-Sep-2007	Docket No.	2007-1577-PST-E	PCW
Respondent	Chanthorn Patrick Tes dba 34 Express			Policy Revision 2 (September 2002)
Case ID No.	34710			PCW Revision September 19, 2007
Reg. Ent. Reference No.	RN101435444			
Media (Statute)	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			
Violation Number	4			
Rule Cite(s)	30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)			
Violation Description	<p>Failed to make available to a common carrier a valid, current TOEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, review of the Station's fuel delivery manifests indicated that the Station had received twenty-nine deliveries of regulated substance without a delivery certificate.</p>			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				
	Potential			X	5%

>> Programmatic Matrix					
Matrix Notes	Falsification	Major	Moderate	Minor	Percent
					0%
	Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
	Adjustment				\$9,500

Violation Events													
Number of Violation Events	29												
	231												
	Number of violation days												
mark only one with an x	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td></td></tr> <tr><td style="text-align: center;">monthly</td><td></td></tr> <tr><td style="text-align: center;">quarterly</td><td></td></tr> <tr><td style="text-align: center;">semiannual</td><td></td></tr> <tr><td style="text-align: center;">annual</td><td></td></tr> <tr><td style="text-align: center;">single event</td><td style="text-align: center;">X</td></tr> </table>	daily		monthly		quarterly		semiannual		annual		single event	X
daily													
monthly													
quarterly													
semiannual													
annual													
single event	X												
	Violation Base Penalty												
	\$14,500												
Twenty-nine single events are recommended (one event per drop).													

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount	\$0
	Violation Final Penalty Total
	\$15,861
This violation Final Assessed Penalty (adjusted for limits)	
\$15,861	

Economic Benefit Worksheet

Respondent: Chanthorn Patrick Tes dba 34 Express

Case ID No: 34710

Reg. Ent. Reference No: RN101435444

Media: Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No. commissions					

Delayed Costs

Equipment			0:0	\$0	\$0	\$0
Buildings			0:0	\$0	\$0	\$0
Other (as needed)			0:0	\$0	\$0	\$0
Engineering/construction			0:0	\$0	\$0	\$0
Land			0:0	\$0	\$0	\$0
Record Keeping System			0:0	\$0	N/A	\$0
Training/Sampling			0:0	\$0	N/A	\$0
Remediation/Disposal			0:0	\$0	N/A	\$0
Permit Costs			0:0	\$0	N/A	\$0
Other (as needed)			0:0	\$0	N/A	\$0

Notes for DELAYED costs

Economic benefit included in Violation No. 3

Avoided Costs

ANNUALIZE [1] (avoided costs) before entering item (except for one-time avoided costs)

Disposal			0:0	\$0	\$0	\$0
Personnel			0:0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0:0	\$0	\$0	\$0
Supplies/equipment			0:0	\$0	\$0	\$0
Financial Assurance [2]			0:0	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0:0	\$0	\$0	\$0
Other (as needed)			0:0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date: 26-Sep-2007		Docket No: 2007-1577-PST-E		PGW		
Respondent: Chanthorn Patrick Tes dba 34 Express						
Case ID No: 34710						
Reg. Ent. Reference No: RN101435444						
Media [Statute]: Petroleum Storage Tank						
Enf. Coordinator: Judy Kluge						
Violation Number: 5						
Rule Cite(s):		30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)				
Violation Description:		<p>Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly. Also, failed to provide release detection for the piping associated with the USTs. Also, failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.</p>				
Base Penalty:					\$10,000	
>> Environmental Property and Human Health Matrix						
OR	Harm					
	Release	Major	Moderate	Minor		
	Actual					
	Potential	x			Percent	25%
>> Programmatic Matrix						
OR	Falsification					
	Major	Moderate	Minor			
				Percent	0%	
Matrix Notes		Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				
Adjustment:					\$7,500	
					\$2,500	
Violation Events						
Number of Violation Events:		1		Number of violation days: 33		
mark only one with an x	daily					
	monthly					
	quarterly	x				
	semiannual					
	annual					
	single event					
<p>One quarterly event is recommended based on the documentation of the violation during the August 24, 2007 investigation to the September 26, 2007 screening date.</p>						
Economic Benefit (EB) for this violation						
Estimated EB Amount:		\$1,165		Violation Final Penalty Total: \$2,735		
This violation Final Assessed Penalty (adjusted for limits):					\$2,735	

Economic Benefit Worksheet

Respondent: Chanthorn Patrick Tes dba 34 Express

Case ID No. 34710

Reg. Ent. Reference No. RN101435444

Media: Petroleum Storage Tank

Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB/Amount
Item Description: No commissions						

Delayed Costs

Equipment				2010	\$0	\$0	\$0
Buildings				2010	\$0	\$0	\$0
Other (as needed)				2010	\$0	\$0	\$0
Engineering/construction				2010	\$0	\$0	\$0
Land				2010	\$0	\$0	\$0
Record Keeping System				2010	\$0	\$0	\$0
Training/Sampling				2010	\$0	\$0	\$0
Remediation/Disposal				2010	\$0	\$0	\$0
Permit Costs				2010	\$0	\$0	\$0
Other (as needed)	\$1,500	24-Aug-2007	26-Jul-2008	9	\$69	\$0	\$69

Notes for DELAYED costs

Estimated cost of monitoring all USIs for releases, to include recording daily inventory volume measurements, monthly reconciliation of inventory control records. The date required is the investigation date and the final date is date expected date of compliance.

Avoided Costs ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				2010	\$0	\$0	\$0
Personnel				2010	\$0	\$0	\$0
Inspection/Reporting/Sampling				2010	\$0	\$0	\$0
Supplies/equipment				2010	\$0	\$0	\$0
Financial Assurance [2]				2010	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	24-Aug-2006	24-Aug-2007	9	\$96	\$1,000	\$1,096
Other (as needed)				2010	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for piping tightness test. The date required is one year prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$2,500

TOTAL

\$1,165

Screening Date: 26-Sep-2007		Docket No: 2007-1577-PST-E		PCW	
Respondent: Chanthorn Patrick Tes dba 34 Express		<i>Policy Revision 2 (September 2002)</i>			
Case ID No: 34710		<i>PCW Revision September 19, 2007</i>			
Reg. Ent. Reference No: RN101435444					
Media [Statute]: Petroleum Storage Tank					
Enf. Coordinator: Judy Kluge					
Violation Number: 6					
Rule Cite(s):		30 Tex. Admin. Code § 37.815(a) and (b)			
Violation Description:		Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.			
		Base Penalty:		\$10,000	

>> Environmental Property and Human Health Matrix

OR	Harm					
	Release	Major	Moderate		Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent	0%

>> Programmatic Matrix

Falsification				
Major	Moderate	Minor		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
			Percent	10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment: \$9,000

Violation Events

Number of Violation Events: 2	365	Number of violation days
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mark only one with an x	daily	<input type="checkbox"/>		Violation Base Penalty	\$2,000
	monthly	<input type="checkbox"/>			
	quarterly	<input type="checkbox"/>			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
	single event	<input checked="" type="checkbox"/>			

Two single events (one event per tank) are recommended.

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$1,425	Violation Final Penalty Total	\$2,188
		This violation Final Assessed Penalty (adjusted for limits)	
		\$2,188	

Economic Benefit Worksheet

Respondent: Chanthorn Patrick Tes dba 34 Express

Case ID No. 34710

Reg. Ent. Reference No. RN101435444

Media: Petroleum Storage Tank

Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No Commission					

Delayed Costs

Equipment			0:0	\$0	\$0	\$0
Buildings			0:0	\$0	\$0	\$0
Other (as needed)			0:0	\$0	\$0	\$0
Engineering/construction			0:0	\$0	\$0	\$0
Land			0:0	\$0	\$0	\$0
Record Keeping System			0:0	\$0	\$0	\$0
Training/Sampling			0:0	\$0	\$0	\$0
Remediation/Disposal			0:0	\$0	\$0	\$0
Permit Costs			0:0	\$0	\$0	\$0
Other (as needed)			0:0	\$0	\$0	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal			0:0	\$0	\$0	\$0
Personnel			0:0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0:0	\$0	\$0	\$0
Supplies/equipment			0:0	\$0	\$0	\$0
Financial Assurance [2]			0:0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,300	24-Aug-2006	24-Aug-2007	1:9	\$1,25	\$1,300
Other (as needed)			0:0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for two petroleum USTs (at \$650 per tank) for the twelve month period preceding the date of the investigation.

Approx. Cost of Compliance

\$1,300

TOTAL

\$1,425

Screening Date 26-Sep-2007	Docket No. 2007-1577-PST-E	PCW		
Respondent Chanthorn Patrick Tes dba 34 Express	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 34710	<small>PCW Revision September 19, 2007</small>			
Reg. Ent. Reference No. RN101435444				
Media (Statute) Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number 7				
Rule Cite(s)	30 Tex. Admin. Code § 334.49(a)(4) and Tex. Water Code § 26.3475(d)			
Violation Description	Failed to provide corrosion protection to all underground components of an UST system which is used to convey or contain regulated substances. Specifically, the flexible connectors in the submersible turbine pumps and dispenser pumps were in contact with water, preventing electrical isolation of the metal components.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Major	Moderate	Minor	
	Actual	Potential	Percent	
	X		25%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	X			0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment			\$7,500	
			\$2,500	
Violation Events				
		1	33	
		Number of violation days		
mark only one with an x	daily	X	Violation Base Penalty \$2,500	
	monthly			
	quarterly			
	semiannual			
	annual			
	single event			
One quarterly event is recommended based on the August 24, 2007 investigation to the September 26, 2007 screening date.				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount \$32		Violation Final Penalty Total \$2,735		
		This violation Final Assessed Penalty (adjusted for limits) \$2,735		

Economic Benefit Worksheet

Respondent: Chanthorn Patrick Tes dba 34 Express

Case ID No: 34710

Reg. Ent. Reference No: RN101435444

Media: Petroleum Storage Tank

Violation No: 7

Percent Interest	Years of Depreciation
5.0	15

Item/Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment	\$500	24-Aug-2007	26-Jul-2008	0:9	\$2	\$31	\$32
Buildings				0:0	\$0	\$0	\$0
Other (as needed)				0:0	\$0	\$0	\$0
Engineering/construction				0:0	\$0	\$0	\$0
Land				0:0	\$0	\$0	\$0
Record Keeping System				0:0	\$0	\$0	\$0
Training/Sampling				0:0	\$0	\$0	\$0
Remediation/Disposal				0:0	\$0	\$0	\$0
Permit Costs				0:0	\$0	\$0	\$0
Other (as needed)				0:0	\$0	\$0	\$0

Notes for DELAYED costs

Estimated cost to repair the cathodic protection system. The date required is the date of the investigation and the final date is the expected date of compliance.

Avoided Costs

Item/Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0:0	\$0	\$0	\$0
Personnel				0:0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0:0	\$0	\$0	\$0
Supplies/equipment				0:0	\$0	\$0	\$0
Financial Assurance [2]				0:0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0:0	\$0	\$0	\$0
Other (as needed)				0:0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$32

Compliance History

Customer/Respondent/Owner-Operator: CN601212996 TES, CHANTHORN PATRICK Classification: AVERAGE Rating: 2.25
Regulated Entity: RN101435444 34 EXPRESS Classification: AVERAGE BY Site Rating: 3.01
DEFAULT
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 31351
Location: 1706 STATE HIGHWAY 34 S, TERRELL, TX, 75160 Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: August 15, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 15, 2003 to August 15, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Phone:

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CHANTHORN PATRICK TES
DBA 34 EXPRESS;
RN101435444**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER DOCKET NO. 2007-1577-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the Respondent's underground storage tank ("UST") delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The TCEQ also considered the Motion of the Executive Director requesting entry of an order requiring the respondent, Chanthorn Patrick Tes dba 34 Express ("Mr. Tes" or "Respondent") to shutdown or remove from service the USTs at the facility located at 1706 State Highway 34 South, Terrell, Kaufman County, Texas.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Tes owns and operates a convenience store with retail sales of gasoline located at 1706 State Highway 34 South, Terrell, Kaufman County, Texas (the "Station").
2. Mr. Tes' two (2) USTs are not exempt or excluded from regulation under the Texas Water Code, the Texas Health & Safety Code, or the rules of the Commission. Mr. Tes' USTs contain a regulated petroleum substance as defined in the rules of the Commission. The Station also consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection conducted on August 24, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Tes:
 - a. Failed to maintain Stage I records at the Station. Specifically, a record of the dates on which gasoline was delivered to the dispensing Station, the truck identification

number, and the date of the last leak testing of each tank-truck tank from which gasoline was transferred to the Station were not available.

- b. Failed to ensure that the gasoline container is equipped with a submerged fill pipe. Specifically, the submerged fill pipes in the regular and super unleaded tanks were not within six inches of the tank bottom.
- c. Failed to ensure that the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch. Specifically, a rain cap, instead of the required pressure-vacuum relief valve, was observed on the gasoline vent line.
- d. Failed to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not amended to reflect current ownership of the UST system.
- e. Failed to ensure that the UST registration and self-certification form is fully and accurately completed and submitted to the agency in a timely manner. Specifically, the initial self-certification was not submitted.
- f. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, review of the Station's fuel delivery manifests indicated that the Station had received twenty-nine (29) deliveries of regulated substance without a delivery certificate.
- g. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly.
- h. Failed to provide release detection for the piping associated with the USTs.
- i. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons.
- j. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

- k. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
 - l. Failed to provide corrosion protection to all underground components of an UST system which is used to convey or contain regulated substances. Specifically, the flexible connectors in the submersible turbine pumps and dispenser pumps were in contact with water, preventing electrical isolation of the metal components.
4. By letter dated September 18, 2007 the TCEQ Houston Regional Office provided Mr. Tes with notice of the violations and the TCEQ's authority to shut down and remove from service UST systems not in compliance with UST system release detection, spill and overflow prevention and/or corrosion protection requirements if the violations were not corrected.
 5. Mr. Tes received notice of the violations on or about September 23, 2007.
 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Chanthorn Patrick Tes dba 34 Express" (the "EDPRP") in the TCEQ Chief Clerk's office on May 8, 2008.
 7. By letter dated May 8, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Tes with notice of the EDPRP. According to the return receipt, Mr. Tes received notice of the EDPRP on May 9, 2008.
 8. More than 20 days have elapsed since Mr. Tes received notice of the EDPRP, provided by the Executive Director. Mr. Tes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
 9. By letter dated August 18, 2008, the TCEQ provided Mr. Tes with notice of the TCEQ's intent to order the UST systems at the Station shut down and removed from service if the violations pertaining to release detection and corrosion protection were not corrected within 30 days of Mr. Tes' receipt of the letter.
 10. As of the date of entry of this Order, Mr. Tes has not corrected the release detection and corrosion protection violations noted during the August 24, 2007 investigation.
 11. The Executive Director recognizes that the Mr. Tes has implemented the following corrective measures at the Station:

- a. On September 14, 2007, the TCEQ Dallas/ Fort Worth Regional Office verified that the required drop tubes were installed to within six inches of the tank bottom in all USTs;
 - b. The TCEQ Dallas/ Fort Worth Regional Office received documentation verifying that the Respondent has obtained Financial Assurance for the USTs at the Station as of September 10, 2007; and
 - c. On September 30, 2007, the TCEQ/Dallas Fort Worth Regional Office verified that the Respondent installed a pressure vacuum relief valve on the gasoline vent line.
12. The UST systems at the Station do not have release detection and corrosion protection as required by 30 TEX. ADMIN. CODE §§ 334.49 and 334.50 and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Tes is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Tes failed to maintain Stage I records at the Station, in violation of 30 TEX. ADMIN. CODE § 115.226(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Tes failed to ensure that the gasoline container is equipped with a submerged fill pipe, in violation of 30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 3.c., Mr. Tes failed ensure that the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch, in violation of 30 TEX. ADMIN. CODE § 115.222(5) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact No. 3.d., Mr. Tes failed to provide an amended UST registration to the Commission for any change or additional information regarding USTs

within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

6. As evidenced by Finding of Fact No. 3.e., Mr. Tes failed to ensure that the UST registration and self-certification form is fully and accurately completed and submitted to the agency in a timely manner, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(B).
7. As evidenced by Finding of Fact No. 3.f., Mr. Tes failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a).
8. As evidenced by Finding of Fact No. 3.g., Mr. Tes failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
9. As evidenced by Finding of Fact No. 3.h., Mr. Tes failed to provide release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a).
10. As evidenced by Finding of Fact No. 3.i., Mr. Tes failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1).
11. As evidenced by Finding of Fact No. 3.j., Mr. Tes failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1).
12. As evidenced by Finding of Fact No. 3.k., Mr. Tes failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
13. As evidenced by Finding of Fact No. 3.l., Mr. Tes failed to provide corrosion protection to all underground components of an UST system which is used to convey or contain regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d).

14. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. Tes with proper notice of the EDP RP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
15. As evidenced by Finding of Fact No. 8, Mr. Tes has failed to file a timely answer to the EDP RP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Tes and assess the penalty recommended by the Executive Director.
16. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Tes for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
17. An administrative penalty in the amount of twenty-six thousand eight hundred dollars (\$26,800.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
18. As evidenced by Finding of Fact Nos. 3, 4, 5, 9, and 10 Mr. Tes failed to correct documented violations of Commission requirements within 30 days after Mr. Tes received notice of the violations and notice of the Executive Director's intent to shut down the Station.
19. TEX. WATER CODE § 26.3475(e) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, and/or corrosion protection for tanks and piping.
20. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
21. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Tes' UST delivery certificate if the Commission finds that good cause exists.
22. Good cause for revocation of Mr. Tes' UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 11 and Conclusions of Law Nos. 2 through 15 and 18.
23. As evidenced by Finding of Fact Number 11, current conditions at the Station constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to TEX. GOV'T CODE

§ 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Mr. Tes shall take the following steps to shut down operations of all USTs at the Station:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Mr. Tes' UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Tes shall cease accepting fuel until such time as a valid certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form including the current ownership information, in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Mr. Tes may submit an application for a new delivery certificate only after Mr. Tes has complied with all of the requirements set forth in these Ordering Provisions.
3. Within 10 days after the effective date of this Order, Mr. Tes shall send his UST delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Within 15 days after the effective date of this Order, Mr. Tes shall submit to the Executive

Director a detailed written report documenting the steps he has taken to comply with Ordering Provisions Nos. 1.a. through 1.e. and 3. Mr. Tes shall submit the report to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

5. Mr. Tes' USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Mr. Tes demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a. through 3.l. and Conclusion of Law Nos. 2 through 13 as listed herein.
6. If Mr. Tes elects to permanently remove from service any USTs at the Station, Mr. Tes shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If Mr. Tes permanently removes any portion of the UST system from service, Mr. Tes shall, within 15 days after the effective date of this order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Mr. Tes shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

7. Mr. Tes is assessed an administrative penalty in the amount of twenty-six thousand eight hundred dollars (\$26,800.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. Tes' compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring

corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Chanthorn Patrick Tes dba 34 Express; Docket No. 2007-1577-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

8. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Mr. Tes shall:
 - a. Install and implement a release detection method for all USTs and the piping associated with the USTs, and begin conducting proper inventory control procedures, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - b. Ensure that corrosion protection is in place for all components of the underground UST system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - c. Begin maintaining all Stage I records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.226; and
 - d. Obtain a new delivery certificate from the TCEQ.
9. Upon obtaining a new delivery certificate, Mr. Tes shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
10. Within 10 days of resuming retail sales of gasoline, Mr. Tes shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8.a. through 8.d. and 9. The written certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon Mr. Tes. Mr. Tes is ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Station.
13. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Mr. Tes if the Executive Director determines that Mr. Tes is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
14. This Order shall terminate five years from its effective date or when Mr. Tes demonstrates to the satisfaction of the Executive Director that he has corrected all of the violations noted herein.
15. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS

§

COUNTY OF TRAVIS

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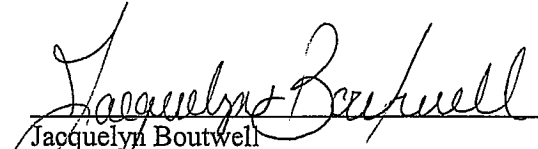
"My name is Jacquelyn Boutwell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Chanthorn Patrick Tes dba 34 Express" (the "EDPRP") with the Office of the Chief Clerk on May 8, 2008.

I sent the EDPRP to Mr. Tes at his last known address on May 8, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt Mr. Tes received notice of the EDPRP on May 9, 2008.

More than 20 days have elapsed since Mr. Tes received notice of the EDPRP. Mr. Tes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".

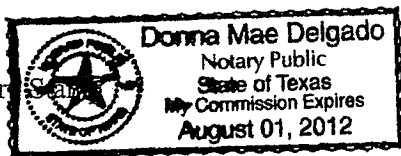
By letter dated August 18, 2008 sent via first class mail and certified mail, return receipt requested (Article Nos. 91 7108 2133 3935 1950 0851 and 91 7108 2133 3935 1950 0547), I provided Mr. Tes with notice of the TCEQ's intent to order the UST systems at the Station shutdown and removed from service if the violations pertaining to release detection, spill and overfill prevention equipment, and/or corrosion protection were not corrected within 30 days of Mr. Tes' receipt of the letter. As of the date of this affidavit, Mr. Tes has not corrected the violations noted during the August 24, 2007 investigation."

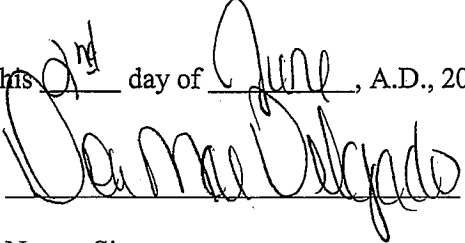

Jacquelyn Boutwell
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 2nd day of June, A.D., 2009.

Notary




Notary Signature